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BEFORE THE
IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION OF IDAHO POWER COMPANY FOR APPROVAL AND IMPLEMENTATION OF SCHEDULE 73, COGENERATION AND SMALL POWER PRODUCTION.	CASE NO. IPC-E-14-24 COMMENTS OF THE J. R. SIMPLOT COMPANY

INTRODUCTION AND BACKGROUND

Pursuant to the Idaho Public Utilities Commission's ("IPUC" or "Commission") Notice of Application Order No. 33136, the J. R. Simplot Company ("Simplot") respectfully submits these Comments on Idaho Power's proposed Schedule 73 for contracting processes applicable to qualifying facilities ("QF") under the Public Utility Regulatory Policies Act of 1978 ("PURPA"). Simplot appreciates the opportunity to comment on Idaho Power's proposed Schedule 73.

Simplot is the owner of two QF projects in Idaho, the Magic Dam small power production QF and the Don Plant cogeneration QF. Simplot's operations in Idaho contain significant potential for additional QF development that could be self-certified as small power production facilities under the PURPA. *See* 18 C.F.R. § 292.201 *et seq.* Simplot is currently

in negotiations with Idaho Power for a renewed contract at its Don Plant and is also likely to again negotiate for sale of the output of its other QF (and potential future QFs) to Idaho Power and is hence directly impacted by the outcome of this proceeding.

Simplot agrees with the concept advanced by several parties in IPUC Case No. GNR-E-11-03, and identified in Idaho Power's application here, that it would be in the public interest to develop fair and reasonable contracting procedures and rules for Idaho utilities. As discussed below, Idaho Power has made an effort to develop a fair and reasonable set of contracting procedures, but Simplot recommends a limited number of improvements that it is hopeful Idaho Power will agree to implement or the Commission will otherwise adopt.

COMMENTS

Simplot has no objection to the overall structure of Idaho Power's proposed Schedule 73, but rather recommends a couple of changes to clarify the tariff's language or ensure that the tariff is fully compliant with applicable law and sound policy.

1. Legally Enforceable Obligation

Idaho Power has proposed to create a new set of criteria for how a QF may create a legally enforceable obligation ("LEO") under 18 C.F.R. § 292.304(d)(2). Specifically, Idaho Power's Tariff Language at Section 1(d) under "Contracting Procedures" states as follows:

> D. The indicative pricing proposal provided to the Customer pursuant to Section 1.c. will not be final or binding on either party. Prices and other terms and conditions will become final and binding on the parties under only two conditions:
>
> i) The prices and other terms contained in an ESA shall become final and binding upon full execution of such ESA by both parties and approval by the Idaho Public Utilities Commission, or

ii) The applicable prices that would apply at the time a complaint is filed by a Qualifying Facility with the Commission shall be final and binding upon approval of such prices by the Commission and a final non-appealable determination by the Commission that:

a. a "legally enforceable obligation" has arisen and, but for the conduct of the Company, there would be a contract, **and**,
b. the Qualifying Facility can deliver its electrical output within 365 days of such determination.

(underline and bold added).

This tariff language, if approved by the Commission, could constitute a major policy change in the Commission's implementation of PURPA and determination of how a QF may create a LEO. Under FERC's regulations implemented by the IPUC, "if the electric utility refuses to sign a contract, the QF may seek state regulatory authority assistance to enforce the PURPA-imposed obligation on the electric utility to purchase from the QF, and a non-contractual, but still legally enforceable, obligation will be created pursuant to the state's implementation of PURPA." *JD Wind 1, LLC*, 129 FERC ¶ 61,148, at P 25 (November 19, 2009). Existing IPUC decisions establish that the Commission will find that the QF created a LEO if the QF can "demonstrate that 'but for' the actions of [the utility, the QF] was otherwise entitled to a power purchase contract." *Earth Power Resources, Inc. v. Washington Water Power Company*, Case No. WWP-E-96-6, Order No. 27231 (1997); *see also Blind Canyon Aquaranch v. Idaho Power Company*, Case No. IPC-E-94-1, Order No. 25802 (1994). The Commission has also used other tests, including the pre-filed complaint test, under which the QF can file a complaint with the Commission, at which time the Commission will make a determination as to whether and when a legally enforceable obligation arose. *See A.W. Brown v. Idaho Power Co.*, 121 Idaho 812, 816, 828 P.2d 841, 845 (1992).

However, the underlined and bolded "and" in Idaho Power's proposed tariff language appears to suggest that, in the absence of a fully executed contract, the QF must not only prove that it obligated itself to sell to the utility but must also prove that it could start delivering power within 365 days. This has never been a requirement for Idaho Power QFs. This new requirement would frustrate QF development because most QFs rely on the contract to finance and *then* build the project. It is often difficult for an un-built project to commence operations within 365 days of Commission-approval of the contract. Even with resource types that could be constructed within 365 days, there are many legitimate reasons that the contract may be signed well prior to the project's actually commencing construction, including financing processes and availability of generation or interconnection equipment and construction crews. Additionally, in the circumstance of having the entire development process halted by the uncertainty that arises when a complaint must be filed against the utility, the QF's ability to commence deliveries within 365 days would be even further compromised.

In sum, Idaho Power's proposal may be acceptable if demonstrating ability to deliver within 365 days were one way, *but not the only way*, to create a non-contractual LEO. However, Simplot doubts very many QFs would seek to create a LEO by commencing deliveries unless they were already built. Thus, Simplot recommends that Idaho Power should delete the entire underlined language or at the bare minimum delete the underlined and bolded "and" and replace it with the word "or."

2. Interconnection Study Requirement

Simplot recommends revisions to the requirements for completion of interconnection studies. Idaho Power's proposed Tariff Language at Section 1(k) under "Contracting

Procedures" details the requirements a QF must meet in order to obtain a final executable contract:

> When both parties are in full agreement as to all terms and conditions of the draft ESA, including the price paid for delivered energy, and the Customer provides evidence that all relevant interconnection studies are complete and that interconnection is to occur on or prior to the requested first energy date, and any applicable Transmission Agreements have been executed and/or execution is imminent, the Company shall prepare and forward to the Customer, within 10 business days, a final, executable version of the ESA.

Because the IPUC has never required QFs to progress through the interconnection process prior to executing a contract, this section of Idaho Power's tariff would impose a new requirement upon QFs. The Commission's PURPA implementation already requires QFs to keep the utility and its customers whole by including liquidated damages provisions and termination damages provisions in Idaho PURPA contracts. In addition, and significantly, Avista removed this requirement for obtaining a draft contract at the recommendation of intervenors in its recent PURPA compliance filing. *See* AVU-E-14-03.

Interconnection studies provide construction time and cost estimates by the utility. While Simplot generally agrees that a responsible developer will have obtained interconnection studies to the point where it is confident it can achieve its online date, imposing this as a requirement to receive a contract will be an unnecessary hurdle in many circumstances. For example, a project's configuration could change slightly from that proposed in a prior interconnection request with which the developer possesses a study with acceptable cost and time estimates. However, even a slight modification of a proposed interconnection configuration may render the existing study invalid for the project, thus necessitating a re-study after the fact. A good the developer should be responsible to be reasonably certain of the costs and time to

construct.

This language is also ambiguous as to what kind of interconnection study the QF must obtain. Typically, the process includes a feasibility study first, then only for some but not all projects a system impact study, and finally a facilities study. The ambiguity in Idaho Power's proposal would likely lead to disputes over how far the QF must progress through the interconnection process. Thus, Simplot recommends that Idaho Power should delete this requirement, or as a compromise, if the Commission is inclined to adopt this new requirement, Simplot recommends it be specific to require that the QF has obtained only a *feasibility* study.

CONCLUSION

Simplot appreciates the opportunity to comment on Idaho Power's proposed Schedule 73, and recommends the clarifications and changes set forth herein.

RESPECTFULLY SUBMITTED this 30th day of October, 2014.

RICHARDSON ADAMS, PLLC

By _____
Peter J. Richardson
Of Attorneys for
J. R. Simplot Company

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 30th day of October, 2014, a true and correct copy of the within and foregoing COMMENTS OF THE J. R. SIMPLOT COMPANY was served as shown to:

Jean D. Jewell, Secretary Idaho Public Utilities Commission 472 West Washington Boise, Idaho 83702 jean.jewell@puc.idaho.gov	_X_ Hand Delivery ___U.S. Mail, postage pre-paid __ Facsimile _X Electronic Mail
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Signed _____
Peter Richardson